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To: Mayor Michael D. Antonovich
Supervisor Gloria Molina
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From: William T Fujioka
Chief Executive Officer

**SACRAMENTO UPDATE**

This memorandum contains three pursuits of County position on Climate Change legislation related to: 1) Public Goods Charge; 2) land use; and 3) energy efficiency; a change in County position on legislation related to building standards; and status updates on five County-advocacy bills related to: 1) solid waste; 2) housing and land use; 3) transportation; 4) local government omnibus bill; and 5) land use; and status updates on two County-interest climate change bills related to drinking water standards and solid waste.

**Pursuit of County Position on Legislation**

**AB 723 (Bradford),** as introduced on February 17, 2011, would extend the sunset date on the Public Goods Charge (PGC) to 2016. The electricity PGC is a non-bypassable surcharge imposed on all retail sales to fund public goods research, development and demonstration, and energy efficiency activities.

Under current law, the State's Investor-Owned Utilities which includes Southern California Edison (SCE), San Diego Gas and Electric, The Gas Company (SCG), and Pacific Gas and Electric, were directed to assess a public goods charge on their customers to collect for public benefit programs. These public benefit programs include the Public Interest Energy Research (PIER) administered by the California Energy

Commission (CEC), Renewable Energy Program administered by the CEC, and Energy Efficiency Program administered by the California Public Utilities Commission (CPUC).

The PIER Program, funded at $62 million annually, funds energy research and new technology research in advanced electric generation, renewable resources, energy efficiency, demand response and reduction, and clean transportation. The Renewable Energy Program funded at $125 million annually, funds renewable resource technology advancement, consumer education on renewable, and partnerships with the private sector to advance the deployment of renewable resources in new and existing buildings. The Energy Efficiency Program funded at $260 million annually, funds energy efficiency incentives, consumer outreach and education, public-private partnerships to promote energy efficient products, and partnerships with public agencies. The PGC is set to expire on December 31, 2011.

According to the Internal Services Department (ISD), the PGC-funded programs have a long history of overall success in promoting and implementing both renewable resources and energy efficiency throughout California. California has the lowest per capita energy usage in the country and is recognized as the nation's leader in renewables and energy efficiency. ISD indicates that since 2002, the County has received, on average, nearly $1 million per year to implement energy efficiency projects in County facilities from the PGC under the SCE/SCG/L.A. County Local Government Partnership. Since the PGC authorization is set to expire at the end of 2011, the above programs and the funding for them will expire when currently collected funding is expended.

In addition, ISD states that current PGC programs also provide a substantial amount of funding for the deployment of Energy Upgrade California. The County has contributed $30 million in American Recovery and Reinvestment Act to grant funding to the PGC funding for Energy Upgrade California in Los Angeles County (EUCLA). EUCLA is a partnership between the utilities, the State regulatory agencies, the County, cities and other stakeholders targeting the upgrade of existing homes and other buildings within the County. By extending the sunset date for collection of the PGC to 2016, ISD states the approval of AB 723 will serve as a potential source of funding for additional sustainability initiatives, County facilities improvements and EUCLA. These would include the County's Property Assessed Clean Energy (PACE) Program, County Environmental Service Centers and the Countywide Regional Climate Action Plan.

The Internal Services Department and this office support AB 723. Support is consistent with existing Board policy to provide funding for local government energy efficiency programs and provide funding for local government renewable energy programs. **Therefore, the Sacramento advocates will support AB 723.**

AB 723 is supported by the California State Pipe Trades Council, Coalition of California Utility Employees, International Brotherhood of Electrical Workers, International Union of Elevator Constructors, Utility Workers Union of America, and Western States Council of Sheet and Metal Workers. There is no registered opposition on file. This measure is set for a hearing in the Assembly Natural Resources Committee on May 2, 2011.

**SB 469 (Vargas),** as amended on April 12, 2011, would require a city, county, or city and county, prior to approving or disapproving a proposed development project that would permit the construction of a superstore retailer, as defined, to cause an economic impact report to be prepared, as specified.

The economic impact report, which is to be paid for by the project applicant, must include specified assessments and projections, including an assessment of the effect that the construction and operation of the proposed superstore retailer will have on retail operations and employment in the same market area, as well as wages, employment, and benefit level data. City and county governing bodies would also be required to provide the opportunity for public comment on the economic impact reports and their findings at regularly scheduled meetings after the completion of the report.

The existing Permit Streamlining Act requires the lead agency that has the principal responsibility for approving a development project, as defined, to approve or disapprove the project within six months from the date of certification of an environmental impact report or within three months from the date of adoption of a negative declaration or the determination by the lead agency that the project is exempt from the California Environmental Quality Act, unless the project proponent requests an extension of time. SB 469 would additionally require an economic impact report for a proposed superstore retailer.

"Superstore" is defined as a business establishment that exceeds 90,000 square feet of gross floor area, sells a wide range of consumer goods, and devotes 10 percent of the sales floor area to the sale of items that are exempted from the Sales and Use Tax law pursuant to Section 6359 of the Revenue and Taxation Code. Superstore includes retail establishments with multiple tenants, and the cumulative sum of related or successive permits that may be part of a larger project, including piecemeal additions to a building as long as consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits. Excluded from the definition of superstore are discount warehouses and discount retail stores that sell more than half of their items in large quantities or bulk and also require shoppers to pay a membership or assessment fee.

The Department of Regional Planning (DRP) indicates that SB 469 imposes a new unfunded State mandate on local governments and creates unnecessary burden in the County's land use permitting process. DRP states that local jurisdictions should have the authority to exercise their regulatory powers in making land use decisions including requiring specialized studies according to local conditions and circumstances. Because the County oversees a diversified unincorporated area, it is critical that the County maintain a greater level of flexibility in its discretionary review of land use applications to accommodate different community needs. DRP indicates that the County, at its discretion, can already require that an economic impact report be prepared for any project if deemed necessary. SB 469 would mandate that an economic impact report be prepared even if the County is to deny a superstore project solely for land use compatibility reasons.

In addition, DRP states that local governments must already comply with the California Environmental Quality Act requirements when making land use decisions and the additional requirement for an economic impact report could make an already cumbersome land use permitting process even more difficult. It could also lead to increased costs to the County because of the type of information that must appear in an economic impact report. For example, information such as public costs and public revenues for a specific project is usually not readily available to any private consultant. Therefore, the County would not be able to defer the responsibility to provide such information or verify data accuracy in the report. It is highly unlikely that the County would be able to recover these costs associated with increased staff time.

According to DRP, other data required in an economic impact report such as retail employment, wages, and benefit levels may infringe on proprietary information. Therefore, it is foreseeable that the data would be difficult to obtain and thus would create more uncertainty in the permitting process. DRP believes that local governments should retain the discretion to cause an economic impact report to be prepared prior to approval or disapproval of a superstore.

The Department of Regional Planning and this office oppose SB 469. Opposition to this measure is consistent with existing Board policy to oppose legislation that would constitute State unfunded land use and general plan related mandates on local governments and oppose legislation that infringes upon county board of supervisors' local land use decision-making authority. **Therefore, the Sacramento advocates will oppose SB 469**.

SB 469 is supported by numerous entities, including: California Labor Federation AFL-CIO; California Small Business Association; California Teamsters Local 911; League of Conservation Voters--San Diego; United Association of Plumbers &

Pipefitters Local 230; and United Domestic Providers of America/AFSCME. It is opposed by California Business Properties Association; California Retailers Association; Orange County Business Council; and Wal-Mart.

This measure is set for a hearing in the Senate Environmental Quality Committee on May 2, 2011.

**SB 564 (Evans),** as introduced on February 17, 2011, would require utilities to collaborate with, and seek comments from, county climate protection authorities or other public agencies that are directly authorized to implement regional or countywide climate protection and energy efficiency programs when developing or revising its energy efficiency program portfolio design.

Under current law, the CPUC is required to review and adopt a procurement plan for each investor owned utility in accordance with specified elements, incentive mechanisms, and objectives. This includes requiring the utilities procurement plan, which is a plan for acquiring and providing electric power to ratepayers, to show that the utilities will first meet its unmet needs through all available energy efficiency and demand reduction resources that are cost effective, reliable and feasible.

In addition, the CPUC must also ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into an electrical corporation's energy efficiency program portfolio design and that the local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation, where appropriate. However, there is no requirement for utilities to collaborate with local governments on energy efficiency program portfolio design. SB 564 would require utilities to work with county climate protection authorities or other public agencies directly authorized to implement regional climate protection and energy efficiency programs when developing or revising its energy efficiency program portfolio design.

The Internal Services Department indicates that current CPUC regulatory processes allow third parties to participate in energy efficiency program portfolio design but only through intervention in administrative legal proceedings. These proceedings—especially related to procurement and energy efficiency program design—can last many months and typically require legal counsel. ISD states that most local governments do not have the time and/or resources to fully participate in these proceedings. As such, many local governments provide input to utilities and CPUC staff through letters or other informal communication. This informal communication is not part of the legal proceeding and is not part of the evidence or testimony that is used to make final decisions.

According to ISD, the County is currently leading in a number of region-wide programs that further regional climate protection and energy efficiency, including implementation of Energy Upgrade California in Los Angeles County, implementation of Los Angeles County PACE financing, development of a Regional Climate Action Plan for both unincorporated County and the entire Countywide region, and piloting the development of a regional energy office. These efforts involve climate protection and energy efficiency programs for County facilities and constituents, and other cities within the region. ISD indicates that SB 564 would provide better collaboration and engagement by the utilities with the County and other stakeholders in developing, implementing and funding these critical programs.

The Internal Services Department and this office support SB 564. Support is consistent with existing Board policy to promote collaboration on regional greenhouse gas reduction strategies and programs. **Therefore, the Sacramento advocates will support SB 564.**

Support and opposition to SB 564 is unknown. This measure is currently in the Senate Energy, Utilities and Communications Committee awaiting a hearing date.

**Change in County Position on Legislation**

**County support and amend AB 19 (Fong),** which would require a water purveyor that provides water service to a multiunit residential structure or mixed-use residential and commercial structure that is subject to specified building standards, to either adopt a general policy to require the installation of a water meter or a submeter to measure water supplied to each individual dwelling unit, or to inform an applicant for new water service as to whether a water meter or submeter is required for each individual dwelling, was substantially amended on April 15, 2011.

The April 15, 2011 amendments delete the option for the water purveyor to adopt a general water meter policy and instead would mandate that a water purveyor require the installation of submeters for any newly constructed multiunit residential or newly constructed mixed-use residential and commercial structure. This new language removes any flexibility in the original version of the bill which enabled water purveyors to develop a policy to determine whether or not submeters would be required. In addition, water purveyors must now directly meter water provided to individual units within a common interest development. This would apply to applications for a water connection on and after January 1, 2014. The remainder of the amendments addresses prescribed installation, billing, and disclosure requirements for landlords for submetered water service to individual dwelling units and do not directly impact the County.

The Department of Public Works (DPW) continues to support the objectives of the bill to inform water users residing in multi-family units or renting in mixed-use commercial structures of their monthly water use to encourage water conservation. However, the recent changes to the bill have caused DPW to change its position from support and amend to support-if-amended. DPW states the latest revisions impose a rigid mandate on retail water purveyors to enforce the implementation of submeters in specified developments and now also requires purveyors to directly meter water service to each individual unit within a common interest development without regard to placement of these meters, accessibility for meter reading and making repairs, and routing of related plumbing and appurtenances. According to DPW, these factors will increase costs and liability for retail water purveyors.

Based on this, DPW indicates that AB 19 must be improved by clarifying that the installation of the water meter in Section 539 be within the public right of way for the bill to remain supportable. In addition, DPW still believes that local agencies and not water purveyors should be responsible for requiring and ensuring that submeters are installed to measure water usage in individual units and continues to recommend that the bill be amended to substitute local agency in each place where water purveyor appears in Sections 538 (a) and (b). Because of the increased costs and liability posed by the amendments, DPW recommends that the County change its position on AB 19 to support-if-amended. **Therefore, the Sacramento advocates will support AB 19, if amended, as indicated above.**

AB 19 is supported by Clean Water Action, Environmental Justice Coalition for Water, Friends of the River, Planning and Conservation League and Sierra Club. It is opposed by Apartment Association of Greater Los Angeles, Apartment Association of Orange County, Apartment Association, California Southern Cities, San Diego County Apartment Association and Utility Conservation Coalition.

This measure failed passage in the Assembly Housing and Community Development Committee by a vote of 3 to 2 on April 27, 2011, but was granted reconsideration.

## Status of County-Advocacy Legislation

**County-opposed AB 341 (Chesbro),** which would: 1) increase the mandatory solid waste diversion rate from 50 percent to 75 percent by January 1, 2020; 2) require the owner or operator of a business that contracts for waste services and generates more than four cubic yards of total waste and recyclable materials per week, to arrange for recycling services; and 3) require enforcement agencies to inform solid waste facility operators that it is requiring a revision in the solid waste facility permit in conjunction with allowing changes in the design or operation of a facility, passed the Assembly

Natural Resources Committee on April 25, 2011, as amended, by a vote of 5 to 3. This measure now proceeds to the Assembly Appropriations Committee.

The amendments taken in Committee are not in print yet, but our Sacramento advocates indicate that the author stated most of the provisions added to the bill in the April 6, 2011 amendments will be removed. This would essentially restore the bill to its original form. Based on this, the County's position would remain the same. We will report out on the impact of the amendments once they are available.

**County-support and amend AB 542 (Allen),** which would increase the number of housing opportunities by expanding the number of land sites deemed suitable for residential development that can accommodate some portion of the city's or county's regional husing need by income level, passed the Assembly Housing and Community Development Committee on April 27, 2011, as amended, by an unofficial vote of 6 to 0, and now proceeds to the Assembly Floor. The amendments are not in print yet but we will report out on the impact of the amendments once they are available.

**County-opposed AB 720 (Hall),** which would eliminate the ability of counties who have elected to be subject to the Uniform Public Construction Cost Accounting Act (UPCCAA) to use Road Commissioner authority granted under Public Contract Code Section 20395 which allows counties to user their own employees to perform work on county highways, and would increase from $30,000 to $45,000 the total cost of a project that is allowed to be performed by public agency employees, was amended on April 25, 2011.

The April 25, 2011 amendments allow a county who has elected to be subject to the UPCCAA to continue to use Road Commissioner authority for maintenance and emergency work on county roads and highways only. However, DPW indicates that the department uses, and will continue to use, Road Commissioner Authority for other types of county road and highway projects to ensure that the work is performed in a timely, efficient, and cost effective manner. Therefore, the County could remain precluded from future use of the UPCCAA. This would limit the existing critical flexibility that the County has to select the optimal methods available for future projects. DPW strongly believes that counties should maintain the current flexibility in existing law to perform work on county highways, while retaining the flexibility to adopt the UPCCAA in the future for unanticipated needs.

Support for AB 720 is unknown. It is opposed by California State Association of Counties (CSAC), the Regional Council of Rural Counties, and the Urban Counties Caucus. This measure is currently in the Assembly Local Government Committee awaiting a hearing.

**County-supported SB 194 (Senate Governance and Finance),** which is the local government omnibus bill that contains a County-sponsored proposal which would increase the upper limit amount a board of supervisors may delegate to a county road commissioner or other county officer to order changes or additions in the work being performed under county road contracts from $150,000 to $200,000, passed the Senate Governance and Finance Committee by a vote of 9 to 0 on April 27, 2011, and now proceeds to the Senate Floor.

**County-opposed SB 244 (Wolk),** which would require a city or county to amend its general plan before January 1, 2014, to address the presence of island, fringe, or legacy unincorporated communities inside or near its boundaries, and also require a city or county to take specified action related to the conditions or deficiencies within these areas and outline implementation measures to achieve the goals for eliminating or reducing the negative conditions, was amended on April 25, 2011. The technical amendments, which include the removal of the January 1, 2014 deadline to amend the general plan, do not change the impact to the County.

SB 244 passed the Senate Governance and Finance Committee on April 27, 2011, as amended, by a vote of 6 to 3, and now proceeds to the Senate Appropriations Committee. The amendments are not in print yet but we will report out on the impact of the amendments once they are available.

This measure is supported by numerous entities, including: California Rural Legal Assistance Foundation, California Coalition for Rural Housing, Clean Water Action California, Planning and Conservation League, Natural Resources Defense Council, and Sierra Club-California. It is opposed by several entities, including: American Planning Association-California Chapter, California Association of Local Agency Formation Commissions, CSAC, League of California Cities, Regional Council of Rural Counties, and San Diego Local Agency Formation Commission.

## Status of County-Interest Legislation

**AB 403 (Campos),** as amended on April 14, 2011, would extend the date by which the California State Department of Public Health (CDPH) must establish a primary drinking water standard for hexavalent chromium on or before January 1, 2004 to January 1, 2013. The bill would require CDPH to report to the Legislature annually on the progress and any delays caused by other agencies, as specified, authorize CDPH to adopt a primary drinking water standard for hexavalent chromium, also known as chromium 6, without a required report or review, and would require the delaying State agency to report the reason for the delay to the Legislature.

Existing law requires the CDPH to adopt a primary drinking water standard for hexavalent chromium. Hexavalent chromium is recognized as a human carcinogen. To date, the CDPH has not developed the standard for hexavalent chromium required by law. AB 403 would extend the deadline for the establishment of a primary drinking water standard to January 1, 2013.

AB 403 passed the Assembly Environmental Safety and Toxic Materials Committee by a vote of 9 to 0 on April 26, 2011, and now proceeds to the Assembly Appropriations Committee. This measure is supported by the California Water Association, Planning and Conservation League, Santa Clara County, and Health Officers Association of California. It is opposed by the Association of California Water Agencies, California Cement Manufacturers Environmental Coalition, and Metropolitan Water District of Southern California.

**AB 1178 (Ma),** which would prohibit a city, county, or local agency from restricting or limiting in any way the importation of solid waste into that city or county based on the place of origin, passed the Assembly Natural Resources Committee on April 25, 2011, as amended, by a vote of 5 to 3, and now proceeds to the Assembly Appropriations Committee.

The Sacramento advocates indicate that the amendments taken have not been finalized and that Assembly Member Ma indicated it was not her intention to preempt local land use planning authority or local control. The amendments are expected to further clarify local control and local land use planning authority. DPW and DRP are currently reviewing AB 1178 for County impact, and will incorporate an evaluation of the impact of the amendments taken in Committee once they are available.

AB 1178 is supported by numerous entities, including: Burrtec Waste Industries, California Association of Sanitation Agencies, California Refuse Recycling Council, Commercial Fleet Services, Inc., Freemont Recycling and Transfer Station, and Central Contra Costa Solid Waste Authority. It is opposed by several entities, including: California Resource Recovery Association, Californians Against Waste, San Bernardino County, Northern California Recycling Association, Sierra Club California, and StopWaste.org.

We will continue to keep you advised.

WTF:RA
EW:sb

c: All Department Heads
Legislative Strategist